

February 6, 1974

SENATOR CAVANAUGH: But in Municipal Court today then don't personally serve them. They mail them out.

SENATOR FELLMAN: This provides a penalty for the person that hasn't come in.

SENATOR CAVANAUGH: Yes, but it also provides a penalty for the person who did not receive the actual notice.

SENATOR FELLMAN: No, it's objection to a penalty, but once he...he can't be penalized until he stands in front the Court. He can't be held in contempt until he is there. Now once he comes in and says I didn't receive the notice, I don't live at that residence. I was in the hospital, I was out of town. He would no longer be in contempt. He would have given the court a reason, and in affect he would have purged himself of the contempt before it occurred. Or before the penalty was invoked.

SENATOR CAVANAUGH: Not as the statute is written.

SENATOR FELLMAN: Yes, because it says may. You are saying shall, you're failing to look at the amendment. Line 8 says that in the bill the witness shall be deemed to be in contempt. The amendment at the head of the bill substitute in line 8, the word may, the word shall.

SENATOR CAVANAUGH: But that does not exclude the possibility. The contemptuous act is defined failure to appear after notice has been mailed to the last known address.

SENATOR FELLMAN: Yes, that he is. That he can purge himself of that by mere explanation. He isn't held in contempt until the court fines him that way.

SENATOR CAVANAUGH: He may or may not be.

SENATOR FELLMAN: Right, it's up to the Judge. And the individual in that predicament would merely come to the Judge to come back to the court and say. I was out of town. And the Judge would say fine, we will reset the case and the trial will be in two weeks.

SENATOR CAVANAUGH: Well, the Judge could do that, or the Judge could say, you are...I find you in contempt under terms of the statute.

SENATOR FELLMAN: Right, the Judge always has that right.

SENATOR CAVANAUGH: And don't you find that undesirable, to make an innocent conduct subject to ...

SENATOR FELLMAN: Well, no...I but that certainly would be

SENATOR CAVANAUGH: Something would be unreasonable on the part of the Judge.

SENATOR FELLMAN: No. Well, it would be an act that somebody would probably appeal from if the man came and said, I was out of town and then the Judge then found him in contempt. That becomes a new fight.